

**City of Ellsworth
Planning Board Meeting
Minutes — Wednesday, May 2, 2018**

Chairman John Fink, Vice Chairman Darrell Wilson, Secretary Mike Howie, member Roger Lessard and alternate member John DeLeo were present. Member James Barkhouse was absent. The seventh seat on the board (second alternate member) is currently vacant. With Barkhouse absent, DeLeo served as a voting member during tonight's meeting.

**Planning Board
member attendance,
Barkhouse absent**

City Planner Michele Gagnon, Code Enforcement Officer Dwight Tilton, Fire Inspector Mike Hangge and Assistant City Planner Steve Fuller attended the meeting. City Manager David Cole was in the audience during the meeting.

**City staff members
in attendance**

1) Call to Order

Chairman John Fink called the meeting to order at 7:00 PM. He had each of the five board members present introduce themselves.

**Meeting called to
order at 7:00 PM**

2) Adoption of Minutes from the March 7, 2018 meeting

Planning Board Alternate Member John DeLeo made a motion to accept the minutes from the March 7, 2018 meeting and Planning Board Member Mike Howie seconded the motion. There was no discussion and no additions or corrections. The motion then passed unanimously, 5-0.

**Adoption of minutes
from March 7, 2018
regular meeting:
APPROVED (5-0)**

3) Amendment to an Approved Major Use Site Development and Major Subdivision titled Atlantic Storage for Atlantic Landscape Construction. The proposed amendment would increase the number of residential duplexes from four to five (and total number of units from eight to 10) by converting a building previously approved for use as an office to a two-family home. The project is located at 124 Bangor Road on two parcels totaling 10.05-acres (Tax Map/Lot: 50/68 and 41/75), in the Urban Zone.

**ATLANTIC
STORAGE for
Atlantic Landscape
Construction**

a. PUBLIC HEARING, DELIBERATION, FINDING OF
FACTS AND CONCLUSION.

Steve Salsbury, land surveyor with Herrick & Salsbury, was present to represent the applicant (Atlantic Landscape Construction). He explained the intent of the application was to get permission to convert the existing building previously slated for use as an office into a two-family duplex.

**Steve Salsbury
representing the
applicant**

Salsbury said the plan is to add four parking spaces off of the access road to the north of the building (Huckleberry Way) but to give the building a Lehman Way — the approved road name — street address (the entry way to the self-storage facility). He said the parking spaces there, which were previously designated for use with the office, can be used by residents.

Fink asked if the plan calls for any external work on the structure and Salsbury said it does not. Salsbury did note this plan calls for the building to be hooked up to city water and city sewer, where the previous plan was for it to be on a private well and private septic system. Fink commented there was no need for any stormwater adjustments, and Salsbury agreed.

Planning Board Member Darrell Wilson said he had questions about both the duplex and the self-storage units all being accessed from the same entry point (Lehman Way). He asked how residents would get into the duplex, and Salsbury said there is one primary entrance each on both the north and south sides. Wilson said he wondered about the proximity of the self-storage units to the southern entrance for the duplex, and if customers might wander up or into the apartment with it being in such close proximity and no sort of barrier or divider.

Upon further questions about parking, Salsbury said there is no designated parking for users of the self-storage facility. He said they will park near their respective storage units, while duplex residents will use the parking spaces in front of the duplex. Wilson said he had a possible concern about there being no buffer between two disparate uses in close proximity on the same property, where such a buffer might be in place if the two uses were on separate properties.

DeLeo said that if a potential tenant knew what the layout was like coming in, that storage unit customers might be driving past or through their parking area, the tenant could find someplace else to rent. Wilson said he agreed with that.

Howie commented that it “certainly would be an interesting tax bill,” with the multiple buildings and uses on the same property.

After a few more minor questions from the board, Fink opened a public hearing at 7:09 PM. There were three private citizens in the audience, none of whom spoke on this matter. Fink then closed the public hearing. Fink asked if city staff had any other questions or concerns, which they did not.

Plans for parking spaces at new duplex

New duplex now to be on city, rather than private, sewer and water

Questions about access points and parking spaces

Public hearing opened and closed at 7:09 PM (no comments)

Wilson made a motion that with regard to the proposed amendment for the major use site development/major subdivision Atlantic Storage, which would change the number of duplexes from four to five, that the board finds the applications meets all the standards and criteria needed to review for this amendment (noting that the rest of the project was approved previously and that there are no waivers requested), that it meets the criteria of Site Development and Major Subdivision, and that the board approve the project. DeLeo seconded the motion. There was no further discussion and the motion then carried unanimously (5-0).

4) Proposed Amendments to the Ellsworth Code of Ordinances, Chapter 56, Unified Development Ordinance. The proposed amendments pertain to the siting of facilities posing risks to drinking water, lighting standards, medical marijuana caregivers, and allowable home occupations in zoning districts.

- a. DISCUSSION OF PROPOSED AMENDMENTS.
 - i. Article 3, Zoning Districts
 - ii. Article 8, Performance Standards
 - iii. Article 14, Definitions
- b. PUBLIC HEARING
- c. RECOMMENDATIONS TO THE CITY COUNCIL

City Planner Michele Gagnon broke the amendments down by subject matter, starting with medical marijuana primary caregiver operations. She noted the city currently has a moratorium in place prohibiting medical marijuana primary caregivers from operating outside of their primary residence. She said that prohibits them from operating as a standalone business, such as one that is currently operating on Main Street.

Gagnon explained some of the history of medical marijuana in Maine. She said when medical marijuana was legalized, state law allowed for dispensaries (including one for Washington and Hancock counties, presently located in Ellsworth) as well as individual caregivers. She said it was understood, by lawyers at the time, to pre-empt municipalities from placing more stringent regulations on caregivers. She said that opinion has changed since then, however.

Gagnon then noted that recreational marijuana was approved by voters in November of 2016. She said following that vote, communities around the state saw a “proliferation” of medical marijuana caregivers coming out of their homes and going into standalone business spaces. She said that was seen as setting themselves up, getting a foot in the door, for when retail recreational marijuana was fully in place. She

**Approval of
Amendment to
ATLANTIC
STORAGE: 5-0**

**Proposed
Amendments to
Chapter 56,
UNIFIED
DEVELOPMENT
ORDINANCE**

**City Planner
Gagnon presents
proposed
amendments by
subject area,
starting with
medical marijuana**

**Background on
medical marijuana
in Maine**

said the city received many inquiries following the November 2016 vote from people interested in setting up operations here.

The city got a “wake-up call,” Gagnon said, after one individual “availed themselves of a, if you want to call it, a loophole” and opened a space on Main Street. She said that individual did not do anything wrong, but it led to the city passing a moratorium on medical marijuana caregivers operating outside of the primary residence.

Fink asked Gagnon to define both primary caregiver and dispensary for the record. She said a dispensary can serve an unlimited number of patients who are medical marijuana cardholders, while caregivers are limited to serving five patients and are capped at certain numbers of plants at various growth stages. Caregivers are not, Gagnon added, allowed to operate together as a collective. Gagnon noted caregivers have been allowed in Maine for a long time, to provide a “compassionate act” for people with legitimate medical needs.

Gagnon noted that the city’s moratorium on primary caregivers operating outside the primary residence is set to expire soon. She said it is unclear exactly how recreational marijuana will play out at the state level, with regard to what specific rules and regulations the state will put in place. She said the city’s intent at the present time is to repeal the moratorium and pass permanent language that mirrors the moratorium into the land use ordinance. She said changes to Article 3 include a table that shows allowed uses in different zones, and that for Medical Marijuana Primary Caregivers operating outside the Primary Residence it says “No” for all zones. She said that is to make clear that a primary caregiver operating outside the home is prohibited in all zones.

Gagnon then referred to the Home Occupation section in Article 8, which she said reinforced that primary caregivers cannot operate outside of a primary residence but can operate inside a primary residence as a home occupation. She noted there is also language as part of the amendment that would hold all home occupations to comply with Chapter 4 of the city’s codes and ordinances (Fire Prevention), which also refers to National Fire Protection Association (NFPA) code. Under 818.10, anything deemed unsafe would be turned over to law enforcement rather than code enforcement.

Planning Board Member Roger Lessard asked if there are any provisions if a primary caregiver is renting. Gagnon said that is between landlords and tenants. Code Enforcement Officer Dwight Tilton said the Code Enforcement Office requires documentation if a tenant is renting a building for a home occupation so a landlord is

Caregiver operating on Main Street prompts city to pass a moratorium

Caregivers vs. dispensaries

Gagnon explains moratorium is set to expire, proposed ordinance change would make the same requirements permanent as part of the ordinance

Relation of caregivers to home occupation language

Caregivers as renters

aware of it. DeLeo said he believes state law requires that tenants have permission from their landlords. A primary caregiver for medical marijuana will be allowed as a home occupation use in a single-family home, as it always has been.

Gagnon said she does not want caregivers to think the city is against them, because she said it is not. She said the city is trying to “set a fair platform” for discussions on marijuana in the future. She said when rules about recreational and medical marijuana are finally ironed out at the state level, the people of Ellsworth, through the City Council and a public participation process, will have to make decisions about where they want various marijuana operations to be allowed, if at all.

Lessard asked Gagnon if there will be a similar requirement for marijuana establishments to one in place for liquor stores, which are prohibited within a specific number of feet from certain facilities such as churches or schools. Gagnon said she could potentially see such a stipulation if there is not already one in place under state law. She said that would be a discussion for the future, however.

Gagnon said that as the city makes decisions about if/when/where it wants to allow marijuana establishments/operations, that it needs to be done in steps and that it needs to be done respectfully in order to make sure that people don’t feel their property rights have been taken away from them.

Wilson asked for clarification on the moratorium and the caregiver Gagnon referenced earlier. Gagnon said a primary caregiver moved into a standalone commercial location on Main Street, and did so when they had the right to do so. Wilson asked if that precipitated the moratorium and Gagnon said it did.

Fink asked how the ordinance change would affect current home occupations. Gagnon said the only change is an explicit statement about compliance with Chapter 4, the fire prevention ordinance. Fink asked if that required current home occupations to make upgrades to comply with the NFPA.

Fink restated his question for Fire Inspector Mike Hangge to answer: would an existing home occupation not currently in compliance with NFPA requirements be required to make changes in order to be in compliance? Hangge said he did not believe the Fire Department would have the authority to do that in a single-family residence, only in a commercial setting, instead. He said NFPA 1, which is adopted into/as part of the city’s Fire Prevention Ordinance, deals with commercial growing, commercial processing and commercial

Gagnon explains city’s intent with this process of a proposed ordinance change

Marijuana businesses to be treated like liquor stores? (setbacks, etc.)

Gagnon: City wants to move respectfully

How do Chapter 4/NFPA rules and regulations effect all other home occupations?

Fire Inspector Hangge talks about NFPA requirements

extraction processes in a commercial setting — not in a one- or two-family residence.

Hangge said meeting the NFPA requirements would be cost prohibitive for an individual. He said he does not believe the city has the authority to go into a home and tell people what to do, but that in an apartment, it is a different story because it is a commercial building. Gagnon noted that “commercial building” is defined differently under Chapter 4 than it is in other city ordinances.

Fink asked if a primary caregiver, as a home occupation, would have to meet the requirements of NFPA 1. Gagnon indicated that was the intent. Fink said it seemed that would effectively be telling a caregiver that “you have to go through extraordinary cost to meet the standards.” He worried that would effectively eliminate home occupations that are new. Gagnon said it would be applicable in a multi-unit building, “where other people may be at risk” in the case of a fire. Fink asked if the ordinance specified multi-unit dwelling, and Gagnon said Chapter 4 does. Gagnon said this change to Chapter 56 (the UDO) simply states people have to comply with Chapter 4, depending on the particular use(s) and how it applies. She said it does not apply in all situations.

Hangge said Article 3 of NFPA 1 deals with growing and processing of marijuana. He said it specifically deals with commercial operations. If someone does it in their own home in Ellsworth, he said, it is difficult to know that unless and until something happens. He said he didn’t think the intent of Chapter 4 or of NFPA 1 was to address single-family dwellings, and that it was instead strictly to address commercial marijuana occupations.

Wilson asked if home occupations always take place in a single-family dwelling and both Gagnon and Hangge said no, they do not. Returning to Fink’s question, Gagnon said Chapter 4 applies to all home occupations that are regulated by Chapter 4. Fink asked what the difference was between growing medical marijuana as a home occupations versus a commercial endeavor. Gagnon said there is a difference in the number of plants allowed.

DeLeo said a caregiver can grow enough marijuana for five patients plus themselves, with certain numbers of specific types or stages of plants (juvenile, seedlings, flowering plants, etc.) allowed under state law. Discussion continued on what is or is not considered a commercial operation. Hangge said if someone is growing marijuana within their own home, that is one situation; he said if they do so in another building on the same premises, it becomes a different situation

Apartment homes as commercial buildings under NFPA/fire department regulations

More discussion on NFPA

Single-family dwellings vs. commercial, residential buildings

Home occupations versus commercial endeavors

DeLeo talks about number of plants allowed

More discussion on home occupations

and that that is when the fire department might get involved because there are “major” safety requirements.

Fink asked if it mattered what occupation is being done in which building, and asked what would happen if he wanted to do small engine repair in a garage — would he then have to comply with NFPA? Hangge said if it were a commercial operation with employees, he very well could have to comply.

Gagnon said people would still have to comply with the requirements of Chapter 4 and NFPA whether or not they are referenced in Article 8 of Chapter 56. Fink asked if a primary caregiver growing marijuana for medical marijuana patients in a garage instead of a house would be considered commercial simply because of the location. “This is not clear cut,” said Fink. Wilson read the definition of home occupation, which references being “any occupations customarily conducted entirely within the dwelling unit.” He said being outside of the home would make it no longer a home occupation. Tilton asked what definition Wilson was reading, and noted there is a section on home occupations that goes into a little more detail. Tilton said people are limited to no more than 50 percent of their structure for a home occupation.

DeLeo asked if rules and regulations about inspection and enforcement for primary caregivers had changed in recent years. He said they were terrible four years ago. He asked if cities could come up with their own inspection and enforcement standards. Gagnon said Maine Municipal Association has advised caregivers can be held to the same standard for getting a license as other operations are, while other entities advised to not touch the issue at all. Gagnon said these proposed changes to the city ordinances would likely be short-lived, “to hold us over right now until we know what’s going on with the state.”

“This is to hold us over until the next phase of marijuana,” Gagnon said. Lessard asked for confirmation that these changes would not affect the medical marijuana dispensary, and Gagnon said they would not. Lessard asked if primary caregivers would be charged a fee, and Tilton said they would only be charged the standard \$10 fee if they came in for a home occupation permit.

Howie asked about the performance standards chart and the line regarding child care with a maximum of six children. Gagnon said she put N/A on that line in the marijuana column because it’s not applicable. She said the first two columns in the table were for zoning districts, while this new third column is a standard for a specific use.

More discussion on home occupations

Options for local standards (or lack thereof)

Gagnon: These rules are to get us to the next phase of marijuana in Maine

Question about daycares and marijuana caregivers

Howie asked if medical marijuana and a day care could be done in the same location. Tilton said unless it is prohibited, someone can. Hangge later said that while he did not know exactly what requirements DHHS would have in place for a situation like that, the Fire Marshal's office has very strict rules for daycares. He said that office inspects the whole facility, not just the daycare space, when they do inspections.

Tilton said marijuana rules are going to continue to change at the state level and that the city is just trying to come up with a way to limit what is going on. He said he supported Gagnon's proposed changes as a good starting point.

Fink said his concern is that he wanted to make sure other home occupations (beyond medical marijuana caregivers) would not be hindered in the future. Gagnon said she felt comfortable that they would not be hindered. She said if the city ever found that was the case, it would go into "high gear" to be sure to adjust it. Tilton separately reiterated that, saying that if bugs come up with regard to other home occupations, the city will work to address them.

City Manager David Cole said the city does not view this as the end point on the issue of marijuana. He said a separate legislative committee has been looking at changes to medical marijuana rules while recreational marijuana has grabbed much of the media attention. Cole said it is currently "hard to see where the landing point's going to be," but that the city believes this is a "prudent step... going forward."

At 7:43 PM, Fink asked if there was any public comment so far. There being none, Gagnon proceeded on to talk about the Wilson lighting ratio standards, named in honor of Planning Board Member Darrell Wilson. She noted that although not yet part of the ordinance, the standards have been used by the board for several years already. Gagnon said that if the changes are approved by Council, city staff believes it would result in fewer waiver requests for lighting standards to the Planning Board. She said it incorporates what the board has done for several years. In instances where it is difficult for the developer to meet the minimum at any point or the average maximum at any point standards, certain illumination ratios in foot candles shall be allowed: maximum at any point to minimum at any point shall be 20-to-1 or less, ratio of the maximum at any point to the average maximum at any point shall be 4-to-1 or less. She said there was also a discrepancy in how foot candles were measured: at grade, or three feet from the ground. She said that had been addressed to be consistent with the definition in Chapter 14.

**Tilton supports
Gagnon's proposal**

**Fink expresses
concern about other
home occupations
(besides caregivers)
being affected**

**City Manager David
Cole speaks, offers
perspective on city's
position on the
matter**

**No public comment
on marijuana at
7:43 PM**

**Discussion moves on
to lighting
standards and
proposed Wilson
lighting ratio
standards**

Wilson said his only comment was that the ratio is considered a contrast ratio. He asked if the word “contrast” could be added in. He said that would be clearer to other people. Gagnon said that would be considered a non-substantial change. Fink suggested putting “contrast ratio” in the definitions section. Gagnon said she would if she is able to (if that is a non-substantial change, also). Gagnon said she might need to bring it back to the Planning Board next month.

Wilson asks for the word “contrast” to be added in before ratio (to make it “contrast ratio”)

DeLeo asked if Wilson would be rewarded for this renaming. Wilson said no, he would not, but that the citizens of Ellsworth would be rewarded by reduced nighttime glare. Fink said Wilson’s reward would be the great respect his colleagues would pay him.

Lighthearted moment among board members

At 7:47 PM, Fink asked if there was any public comment on the lighting standards. There being none, discussion moved on to underground storage tanks and above-ground storage tanks. Gagnon said this was addressed in pages 7 and 8 of Article 8.

No public comment on lighting standards at 7:47 PM

Gagnon said she could track language about these facilities in city ordinance as far back as the 1990s and she said it was likely there before that, too. Gagnon said the city realized the required 300 foot distance between developments where gas or diesel fuel was to be stored or sold and abutting property lines not only did not make sense but was also not consistent with state law. Gagnon said the city is proposing to remove the language in the city’s ordinance and to instead refer to state law “which prevails, no matter what.” Having the language about state law in the city ordinance as a reference would still serve as a reminder to staff, she said (included in a non-numbered box, which is not officially part of the ordinance but is an educational aide).

Discussion moves on to above- and below-ground storage tanks

Gagnon: This change will refer/defer to state law

Wilson asked what if any difference there is between oil storage tanks and diesel or other fuels — does the language cover everything? Gagnon said she would need to refer to state law. He asked if it covered gasoline. Hangge said there are certain requirements for fuel storage tanks established by the federal DOT, i.e., double-walled tanks, etc. He went into detail about those, and answered additional related questions from Wilson.

Questions about different types of storage tanks

Gagnon said the city is not administering these requirements, but rather reminding staff and applicants that the state law exists and directing them to that law. In response to a question from Howie, Gagnon said tanks have to be at least 300 feet from wells. Fink asked if the reverse was true — if a tank goes in first, can someone then put a well within 300 feet of a tank. Gagnon said she was not sure.

Discussion about distances between tanks and wells and vice versa

Howie said having grown up in the Boston area, he knows that water contamination from fuel storage tanks is a big deal. Gagnon agreed.

As discussion waned, Fink said all he could say to Gagnon was, “Tanks a lot.” Gagnon quickly quipped, “That’s well said.”

At 7:55 PM, Fink asked if there was any public comment on the matter. There being none, discussion moved on to Article 14 (Definitions). Gagnon said the changes are basically technicalities — deleting duplicate and other definitions and adding the public works director to the definition of the Technical Review Team.

At 7:56 PM, Fink asked if there was any public comment on the definition changes. There being none, he then asked what the board would like to do with the proposed amendments.

Wilson made a motion that with regard to the proposed amendments to the specific articles of Chapter 56, as detailed in the materials presented that night, that the board recommend the adoption of these changes to the City Council with an attempt to add the contrast ratio item to the definitions section (otherwise, recommended as written). Lessard seconded the motion. There was no discussion, and the favorable recommendation then carried unanimously (5-0).

5) Proposed Amendment to the City of Ellsworth Official Land Use Map. The proposal is to consider the rezoning of land on the east side of Route 172 (the Surry Road) from the Neighborhood Zoning District to the Urban Zoning District. The proposed rezoning includes seven parcels (or portions thereof) totaling 37.84± acres on Tax Map 20.

- a. DISCUSSION OF PROPOSED AMENDMENT
- b. PUBLIC HEARING
- c. RECOMMENDATION TO CITY COUNCIL

Gagnon introduced the proposed amendment and the supporting documentation that the Planning Board received. She said when the former Ben’s Store was purchased, there was a question from the owner about whether he was allowed to sell fuel. She said a review showed that not only was he not allowed to, but that other nearby existing uses such as Saunders Automotive and the Edaco Court mobile home would not be allowed to expand under the current zoning (Neighborhood Zoning District) because they are not allowed uses — they were there before the current zoning and were grandfathered in. She said city staff felt there was a different

Puns abound

No public comment on storage tanks at 7:55 PM; discussion moves on to Article 14 (Definitions)

No public comment on definitions at 7:56 PM

Recommendation to the City Council on Chapter 56/Unified Development Ordinance amendments: FAVORABLE (5-0)

Proposed Amendment to City of Ellsworth OFFICIAL LAND USE MAP

Gagnon outlines proposed rezoning for a section of the Surry Road (Route 172)

commercial character to that small area and that those establishments are used by people traveling back and forth to and from Surry or points south.

Gagnon said the city was proposing the rezoning to embrace the existing character of the area and to allow existing uses to expand. She said of the seven parcels looked at, five are in one ownership (Pat Jordan or one of his LLCs). The other two parcels — the former Ben's Store and Edaco Court — are in different ownership. She said city staff had direct or indirect contact with all of the property owners except Edaco Court. Gagnon showed a table of allowed uses, and what would change from the Neighborhood District to the Urban District, and she said the changes are "really small." She said the transition from Neighborhood Zone to the proposed new Urban Zone area is "very fluid."

Fink asked why this should not be considered spot zoning, as he noted the new Urban Zone area does not abut any other Urban Zone area. Gagnon said she did not see it at all as spot zoning. She said it is about 38 acres, not in just one ownership. Fink said it looked like spot zoning to him.

DeLeo said he agreed with Fink. He said he was not concerned about a gas station at the former Ben's Store, but that not just that property could be re-zoned. He said it appeared other properties had been taken and included in a rezoning proposal to create an Urban Zone in the middle of a Neighborhood Zone area. He said he could find no other examples of this elsewhere in the city.

DeLeo read the definition of the Neighborhood Zone and said it is primarily designed for residents, though he acknowledged there are some commercial uses in this particular area. DeLeo said he was concerned about "destroying the flavor of the Neighborhood Zone by changing it to an Urban Zone." He said he also worried about possible future expansion of the new Urban Zone area. He said one new allowed use in the Urban Zone that concerned him would be a 100,000 square foot community shopping center.

Gagnon said city staff considered making the sale of fuel an allowed use in the Neighborhood Zone. She said they realized that there was already a node with a different character there (as described previously) and that this rezoning proposal would be more true to the character of the node. Making the sale of fuel an allowed use in the Neighborhood Zone, she said, would then mean gas stations could be allowed in any Neighborhood Zone section of the city.

Gagnon presents more information on proposed rezoning

Fink: This looks like spot zoning

DeLeo expresses concerns about proposed rezoning

DeLeo: Change to Urban Zone could "destroy the flavor" of the existing neighborhood

Making sale of fuel an allowed use versus rezoning the area

DeLeo asked about notification. Assistant Planner Steve Fuller said abutters and others in the area got a letter and a map showing the proposed rezoning. DeLeo asked if those residents were told that the zoning change could mean a 100,000-square-foot shopping center could be built in their neighborhood. One resident in the audience said no.

DeLeo asks about notification that was done prior to the meeting

Gagnon said the city provided due notice as it is required to do under Chapter 56 (Article 1, Section 115). She said the Planning Office received one inquiry about the proposed rezoning and that additional information was provided to that person. She said the city went beyond the distance required in the ordinance, and that it also notified those residents of the planned public hearing before the City Council on this matter, if the Planning Board were to make a favorable recommendation.

Gagnon explains what city did for notification

Fink read the definition of a convenience store, noting that it requires all sales to take place inside, and asked how a gas station could be allowed as part of that. Gagnon noted there is a separate definition of a gas station as an allowed use, and that a gas station is an allowed use in the Urban Zone proposed. Discussion continued on the nature of gas stations and convenience stores. Gagnon noted the definition of gas stations includes "the retailing of items typically found in a convenience store."

Discussion of definitions for convenience store vs. gas station

Fink said he remained concerned about the issue of spot zoning. He said this Urban Zone area would not be close to any other existing Urban Zone areas.

Wilson asked about some of the existing uses not being allowed to expand (grandfathered non-conforming uses) and how the uses became non-conforming. Gagnon explained the history of zoning relating to that.

Wilson asks for clarification of existing zoning and grandfathered uses

Gagnon read a definition of spot zoning: that it is a small parcel of area, for a use "totally different from that of the surrounding area" to the benefit of that landowner and to the detriment of others.

Wilson asked about the city's Urban Core designation, and how it relates to the Urban Zone. Gagnon explained the Urban Core is a non-zoning designation. Wilson asked if the city would need to expand the Urban Core to encompass this area if the proposed new Urban Zone area was approved, and Gagnon said she would need to look into it. Gagnon said the Urban Core designation does have implications for things such as lighting standards, however.

Wilson asks how Urban Core definition / designation relates to this rezoning proposal

Gagnon said she wants to do whatever the right thing is and not rush into the rezoning proposal. She said if there are better ways to accomplish the same goal, the city could look at doing that. She said there is a will to allow gas to be sold there for several reasons: a benefit in not increasing traffic on the High Street corridor, that it reflects the existing character of the neighborhood and is not an incompatible use, and that she doesn't see this proposal as spot zoning.

Gagnon explains reasoning for proposed rezoning

DeLeo read part of the definition for the Neighborhood Zone, that the "purpose of the zone is to protect existing and attract new residential neighborhoods." He said to take land out of the Neighborhood Zone in the middle of that zone and turn it into Urban, "whatever good intentions there are," then "destroys that purpose" of the Neighborhood Zone. He said that is especially true when one looks at what is allowed in the Urban Zone that is not allowed in a Neighborhood Zone. DeLeo said the trade-off is too much to make the proposed zoning change. Fink noted it also changes the lot line and setbacks.

DeLeo says proposal conflicts too much with existing nature of neighborhood

Wilson said he lives in the north end of Ellsworth and liked the fact there used to be a convenience store at the end of his road. Wilson said the idea that several lots with (grandfathered, but unable to expand) non-conforming uses would be in a new zoning "pocket" seemed to make sense to him. He said he doesn't live or own property there, but said he saw it as an opportune place for future growth and that all such growth would not need to be residential. Wilson said he thought it made sense long-term.

Wilson speaks in favor of rezoning proposal

Fink and Howie each expressed concern that this could be the start of a "domino effect": that this rezoning of a specific area could then be enlarged in coming years, effectively replacing the Neighborhood Zone over time. Wilson said the board needs feedback and input from the public to know if rezoning is something they do or do not want. Wilson said one of his primary questions was who had been told about tonight's meeting, and said if it was properly advertised and people have objections they need to voice them.

Board expresses concerns about "domino effect"

Wilson asks about notification

Fuller said approximately 30-40 notices were mailed out directly to residents in and abutting the area proposed for rezoning.

Gagnon said there are probably better ways for the process to work, based on what she heard from board members tonight. She said one possibility would be to create a new category of zoning district for "nodes" such as this — a cluster of commercial activity in a rural or neighborhood area.

Gagnon: Other options exist and can be looked at

DeLeo said if there was a “less intrusive” way to achieve the same goal he would encourage it. He said he did not particularly object to having a gas station at that location. He said he did have an objection “to a gas station going into that location in this way.”

DeLeo expresses concern

Lessard noted the undeveloped land in the proposed rezoning area and said it could change the character of that space.

At 8:27, Fink asked for public comment. Valerie Peer, who lives at 1 Hillside Drive (diagonally across the Surry Road from the former Ben’s Store), spoke. She spoke in favor of keeping the area residential. She said she has lived on the Surry Road for 30 years and has never run out of gas before getting to High Street. She said she did not see the need for a gas station.

Fink opens public hearing at 8:27 PM

Valerie Peer speaks in opposition to proposed rezoning

Peer said she would encourage her neighbors to come to future meetings on the subject because she said she did not think anyone recognized what impact the rezoning could have. She said she thought spot zoning was a big issue. She worried about accidents involving cars turning into the store/gas station. She said she thought some of the other options (allowed uses) for the acreage in the proposed rezoning area were “a little scary.”

Peer said there were no other gas stations in town with a residence above it or so close. Fink noted there was precedent for that (the former Pondview store on the Bucksport Road).

“I would like to urge that we just keep it the same,” said Peer in conclusion. “I don’t think there’s another push for gas station in town. We have plenty.”

Peer wants neighborhood to remain the same

Brian Muir spoke next. He and his wife, Josie, are going to open Josie’s Country Store at the site of the former Ben’s Store. Muir said he grew up in Ellsworth on Laurel Street. He said he and his wife aren’t intending to put a gas station in the immediate future, but would like to see if they could “exercise that option.”

Store proprietor Brian Muir speaks

Muir said it his contention that putting a gas station in there is possible. He based that in part on unsolicited drivers stopping by and asking if he would be putting gas in. He said it could be done in an aesthetically pleasing way and in a way that would fit in in the neighborhood. He said he understands people don’t want the Surry Road to look like High Street and he said he does not either.

Muir believes there is demand for a gas station on the Surry Road

“We’re not looking to come into the neighborhood and cause a whole bunch of problems,” said Muir.

Muir: We don’t want to disrupt

Steve Salsbury, who lives on the Surry Road, said he didn’t see this as a spot zone change noting that it was multiple lots and “substantial” acreage. He said he sees it as a “natural progression” and said he sees higher density buildout on the Surry Road in the future. He said he remembers gas being sold at Ben’s Store years ago. He said in hindsight, this area should perhaps not have been in the Neighborhood Zone. He said it would be a shame for the trailer park (Edaco Court) to not be allowed to expand, because he said high-density housing is a need and ideal because of existing public utilities. Salsbury concluded by saying he would support the zone change.

Steve Salsbury speaks in support of proposed zone change

City Manager David Cole spoke and said he agreed with Salsbury and Gagnon in that he does not see this as spot zoning. Cole referenced his previous work as “a transportation person” and noted the Surry Road is also a state highway (Route 172). He said it connects to other communities and other corridors. He said he hoped a highway like this could accommodate fuel on it. He said he has heard positive feedback on the idea.

City Manager Cole speaks in support of proposed rezoning

Gagnon then said she would like to not take this proposal to the City Council at this time and instead put it on hold to look at a few more ideas. She said she heard clear direction and concern from the Planning Board and others.

Gagnon asks to put rezoning proposal on hold for now

Fink said rather than changing a zone he would rather see a change of definitions and allowed uses for a whole zone. Gagnon said that would have to be done carefully, because each action causes reaction(s) and said it could cause more trouble down the road.

Fink suggests an alternative method

Wilson suggested a little more community outreach such as a neighborhood meeting.

Wilson wants more community outreach

As board members questioned how to deal with the agenda item, in light of Gagnon’s request to put the proposal on hold, Cole suggested the board could “remand” the item back to Gagnon. **Wilson made a motion that the Planning Board remand the agenda item (the proposed rezoning) “for further construction and review.” DeLeo seconded the motion. There was no discussion, and the motion was then unanimously approved (5-0).**

Remand proposed Amendment to City of Ellsworth OFFICIAL LAND USE MAP (Surry Road rezoning) to City Planner: 5-0

6) Signing of Mylars & Adjournment

Wilson made a motion to adjourn after the board signed mylars, which was seconded by Lessard. There was no discussion and the

Meeting adjourned at 8:40 PM.

vote in favor of the motion was unanimous (5-0). The meeting adjourned at 8:40 p.m. Mylars and plans for Atlantic Storage were signed.

Minutes prepared by: Steve Fuller, Assistant City Planner

Minutes approved by Ellsworth Planning Board on June 6, 2018:

6/6/18 
Date Mike Howie, Secretary
Ellsworth Planning Board

**Mylars and plans
for Atlantic Storage
signed**

*Agendas and minutes
posted on the city of
Ellsworth's website:
ellsworthmaine.gov*